the ground that the boy did not know that petrol was likely to burst into flame if heat were brought near it.

Clerk and Lindsell on Torts, 13th Edition at page 585 has this to say:

"From the cases it seems to be that in considering whether a child has taken reasonable care for its own safety regard must be had to the age of the child, the circumstances of the case and the knowledge by the particular child of the perils to which the defendant's negligence has exposed him. There is no age below which, as a matter of law, it can be said that a child cannot be guilty of contributory negligence."

In our instant case it would appear that it was most improbable that the plaintiff had knowledge of the danger of "bomoh" treatment.

In the circumstances, I enter judgment for the plaintiff in the sum of $10,000 general damages and $95 special damages and costs. Interest at the rate of 6% on general damages and 3% on special damages with effect from date of service of writ. I further order that the sum of $10,000 be paid to the Public Trustee during the infancy of the plaintiff with liberty to apply.

Claim allowed.

Solicitors: *Mahmood Adam & Co.; Wrigglesworth & Co.*

HALIMAH BINTI ABDULLAH v. TENGKU MARIAH BINTI SULTAN SULAIMAN

[O.C.J. (Mohamed Zahir J.) April 3, 1979]
[Kuala Trengganu — Civil Suit No. 60 of 1978]

Practice and Procedure — Limitation — Claim for recovery of land — Acknowledgement — Time runs from date of acknowledgement — Limitation Ordinance, 1953, s. 26(1).

In this case the plaintiff alleged that by a "Jual Beli Sementera" dated June 28, 1951, the defendant undertook to execute the transfer of the land when she obtained it from the estate of her father, the late Sultan Sulaiman. The previous solicitors of the defendant had also written on January 14, 1978 that the defendant was prepared to sign a transfer of the land into the name of the plaintiff. The plaintiff claimed the land and the defence was limitation.

Held: the letter of the solicitors for the defendants was sufficient acknowledgment for all intents and purposes and therefore the plaintiff's claim was not statute-barred.

Case referred to:-

(1) *Wee Tiang Tong* v. *Ong Chong Hooi & Anor.* [1978] 2 M.L.J. 54.

CIVIL SUIT.

Wan Abdul Muttalib for the plaintiff.

Mrs. Cecilia Fernandez for the defendant.

Cur. Adv. Vult.

Mohamed Zahir J.: This case came up before me for hearing on February 4, 1979 and before its commencement, counsel for the defendant, Mrs. Fernandez, asked for adjournment as her client was sick in Penang. I then asked her whether her defence was based solely on the plaintiff's claim being statute-barred. Upon her replying in the affirmative, I asked both counsel whether they would agree to argue on this point alone. They both agreed.

Mrs. Fernandez submitted that the plaintiff waited for 26 years before instituting the suit and submitted that it is statute-barred and quoted the case of *Wee Tiang Tang* v. *Ong Chong Hooi & Anor.*[1] She argued that limitation to the plaintiff's claim would operate in spite of the previous defendant's solicitors admitting the sale and having notified the plaintiff's solicitors that the defendant was prepared to sign any document of transfer.

Encik Muttalib, counsel for the plaintiff, produced the letter of "Jual Beli Sementara" dated June 28, 1951 where the defendant undertook to execute the transfer when she obtained the land from the estate of her father, the late Sultan Sulaiman. He also produced a letter from the previous solicitors of the defendant, Nik Hussain, Ibrahim & Abdullah, dated January 14, 1978 where it was stated that the defendant was prepared to sign a transfer of the land into the name of the plaintiff.

I do not intend for the purpose of argument before me to include the fact that the plaintiff, as submitted by her counsel, is in possession of the land at all material times and that she had two or three houses on the land, as this should be properly adduced through a witness from the witness box. Further, this point is not pleaded in the statement of claim and there is no admission.

Vide paragraph 4 of the statement of claim, the plaintiff pleaded that on June 28, 1951, the defendant sold the said land to the plaintiff at the price of $450 and to this effect the defendant executed a deed of sale. *Vide* paragraph 4 of the defence, the defendant denied the facts alleged in paragraph 4 of the statement of claim but strangely enough admitted having entered into an agreement to sell the said land after the said land was registered in the defendant's name in consideration thereof accepted $450 from the plaintiff. Paragraph 4 of the defence virtually admitted paragraph 4 of the statement of claim.

Vide paragraph 5 of the statement of claim, the plaintiff pleaded that the defendant agreed to execute a valid transfer of the said land to the plaintiff immediately after the said land was registered in her name. There was no denial of this paragraph in the defence and in fact the defence did not refer to paragraph 5 of the statement of claim at all and as such and in view of the admission in paragraph 4, I take it that paragraph 5 of the statement of claim was admitted.

Paragraphs 9 and 10 of the statement of claim allege that the plaintiff wrote to the defendant requesting for an execution of a valid transfer and that the allegation that there was a reply from the previous solicitors for the defendant admitting that the defendant was willing to execute such a transfer and also the plaintiff's solicitors prepared such form of transfer and forwarded the same to the defendant's previous solicitors for the defendant to sign and which the defendant had failed to do. The defendant did not refer to these allegations directly but *vide* paragraph 6 of her defence she pleaded in the following manner:

"In answer to paragraphs 8-13 of the Statement of Claim the defendant contends that the plaintiff's cause of action, if any, which is denied, is time-barred...."

Again, there was no specific denial by the defendant of her willingness to execute such transfer and I take it therefore that these facts are also admitted (see Order 19 rule 13 of Rules of the Supreme Court).

Now, the defendant's counsel submitted to me that her client's only defence was that the plaintiff's claim is time-barred.

Wee Tiang Tang's case as quoted by the defence counsel turned on whether the letter written by the bank (not from the defendants in that case) operated as an acknowledgment of the plaintiff's claim. If it did, time for the plaintiff would run on the date of acknowledgment as provided under section 26(2) of the Limitation Ordinance No. 4 of 1953. In that case it was held that the bank's letter was not a sufficient acknowledgment and for that reason the plaintiff's claim in that case was held to be statute-barred.

The plaintiff's claim in the instant case is to recover land and the relevant section under the Limitation Ordinance pertaining to this point is section 26(1) which reads as follows:

"26. (1) Where there has accrued any right to recover land or to enforce a mortgage or charge in respect of land or personal property, and —

(a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or

(b) in the case of any such action by a mortgagee or chargee the person in possession as aforesaid or the person liable for the debt secured by the mortgage or charge makes any payment in respect thereof, whether of principal or interest,

the right shall be deemed to have accrued on and not before the date of the acknowledgement or last payment."

In this case the defendant's previous solicitors' letter reads as follows:

"Kami mewakili Y.M. Tengku Mariah binti Sultan Sulaiman, No. 10, Jalan Trengganu, Bukit Persekutuan, Kuala Lumpur.

2. Kami diarah merujuk kepada surat tuan dan puan bertarikh pada 13hb. Disember, 1977 dan memaklumkan bahawa Yang Mulia itu menegas sekali-kali tidak terlintas mengengkar dari Perjanjian yang telah diperbuat bagi menjual tanah tersebut diatas kepada tuan dan puan. Sungguh pun perkara ini sudah berapa lama dahulu berlaku, Yang Mulia itu tetap berpegang kepada Perjanjian yang dimeterikan berkenaan tanah tersebut diatas.

3. Kami juga diarah memaklumkan bahawa geran tanah tersebut telah dikeluarkan tetapi malangnya telah lama kehilangan semasa perpindahan keluarga kebeberapa tempat. Walau bagaimana pun Yang Mulia sanggup menanda tangani apa sahaja dokumen yang dikehendakki bagi memindah tanah tersebut kepada tuan dan puan melalui kami.

4. Kami juga diarah memaklumkan bahawa, munkin kekeliruan tuan dan puan ada menyebut bahawa tanah KRM 1225, Lot 335 telah juga dijual kepada tuan dan puan. Dalam hal ini Yang Mulia menegas pada ingatannya tanah ini tidak pernah dijual kepada sesiapa dan sukacita kami kiranya tuan dan puan dapat membuktikan perkara ini kepada kami."

The plaintiff is suing for KRM 1224, Lot 334 and not KRM 1225, Lot 335 which the defendant stated she could not recollect selling to anyone.

I think this letter is sufficient acknowledgment for all intents and purposes and as such I am of the opinion that the plaintiff's claim is not statute-barred.

Accordingly, I entered judgment for the plaintiff and as I considered that the plaintiff ought to have sued the defendant much earlier, I disallowed her the costs of this suit.

Claim allowed.

Solicitors: *Wan Abdul Muttalib & Co.; Syed Ibrahim & Co.*

PUBLIC PROSECUTOR v. RAJAMAH

[R.Cr.J. (Chan J.C.) April 6, 1979]

[Perak — Criminal Revision No. 11 of 1979]

Criminal Law and Procedure — Road Traffic — Parking — Excess charge and Surcharge — No power to impose excess charge/Surcharge — Whether Municipality of Ipoh is appropriate authority — Road Traffic (Attendant Parking Places) (Ipoh Municipal Council) Order, 1969 — Whether order valid — Interpretation and General Clauses Ordinance 1948, s. 23 — Road Traffic Ordinance, 1958, ss. 58, 62 & 63.

Administrative Law — Subsidiary legislation — Ultra vires — Road Traffic (Attendant Parking Places) (Ipoh Municipal Council) Order, 1969 — Road Traffic Ordinance, 1958, s. 62.

In this case the defendant was convicted on a charge of failure to pay the excess charge/surcharge incurred in respect of the parking of a motor vehicle, which was alleged to be an offence under paragraph 13A(2) of the Road Traffic (Attendant Parking Places) (Ipoh Municipal Council) Order, 1969 and punishable under paragraph 27 of the said order. The order was made by the Municipality of Ipoh in purported exercise of power under section 62 of the Road Traffic Ordinance, 1958. The matter was called up for revision.

Held: (1) as the Municipality of Ipoh has not been declared an authority for the purposes of section 62 of the Road Traffic Ordinance, 1958, it had no power to make the order;

(2) the appropriate authority has no power to provide for punishment or to impose penalties for any contravention of an order made under section 62 of the Road Traffic Ordinance, 1958, nor has it power to create offences. Contravention of the order is punishable under section 62(7) of the Road Traffic Ordinance. Therefore paragraphs 13(A) and 27 of the Order which purport to provide for punishment in excess of that provided in section 62(7) of the Ordinance are *ultra vires* and void;

(3) Paragraphs 13(A)(3) and 24 of the Order are also *ultra vires* as they purport to alter the law in seeking to create certain presumptions not to be found in the existing law.

Cases referred to:-

(1) *Ward* v. *James* [1965] 2 W.L.R. 455.

(2) *Liversidge* v. *Anderson* [1942] A.C. 206, 245.

(3) *In re Grosvenor Hotel, London (No. 2)* [1965] 1 Ch. 1210.

CRIMINAL REVISION.

Lee Lim Huat (Deputy Public Prosecutor) for the Public Prosecutor.

Chan J.C. (delivering oral judgment): In so far as this revision is concerned, I shall read only the relevant parts of section 62 of the Road Traffic Ordinance, 1958:

"62. (1) Any appropriate authority may by order published in the Gazette provide suitable parking places for vehicles....

....

(3) An order under subsection (1) may prescribe —

(a) the vehicles or class of vehicles which may use such parking place and the period during which and the conditions subject to which such parking place or stand may be used; and

(b) *the charge, if any, to be made for the use of such parking place.* (my emphasis).

(4) Where any charge for the use of such parking place is to be made or intended to be made pursuant to any order under this section, such order shall specify —

(i) ....

(ii) ....

and may further make provision in a parking place for any of the matters following:

....